

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

JOHN CHRISTIAN GRAVLEE,

Plaintiff,

V.

Case No. CIV-24-273-PRW

DONOVAN HORACE GRAVLEE, JR.,

et al.,

Defendants.

ORDER

Before the Court is Magistrate Judge Shon T. Erwin’s Report and Recommendation (Dkt. 21), recommending that Plaintiff’s Motion for Leave to Proceed In Forma Pauperis be denied. Subsequent to the filing of the Report and Recommendation, Plaintiff filed a Motion to Dismiss (Dkt. 23), seeking dismissal of this action “due to unpreparedness and lack of counsel.”

Plaintiff, proceeding pro se, filed his Complaint (Dkt. 1) on March 14, 2024, and filed a Motion for Leave to Proceed In Forma Pauperis (Dkt. 3) on March 20, 2024. Magistrate Judge Erwin identified several problems with the Motion and ordered Plaintiff to cure the deficiencies (Dkt. 5). Plaintiff filed an untimely Supplement to his Motion (Dkt. 8) on the same day that Judge Erwin issued a Report and Recommendation (Dkt. 9), recommending that Plaintiff's Motion (Dkt. 3) be denied for failure to comply with the

Court's Order (Dkt. 5). This Court declined to adopt Judge Erwin's Report and Recommendation in light of Plaintiff's Supplement (Dkt. 15).

Judge Erwin then granted Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Dkt. 17), but ordered Plaintiff to pay the full filing fee, with an initial partial filing fee of \$24.33 due by July 1, 2024. After Plaintiff's non-compliance with the Order (Dkt. 17), Judge Erwin filed his second Report and Recommendation (Dkt. 21) on July 10, 2024, again recommending that Plaintiff's Motion (Dkt. 3) be denied for failure to comply with the Court's orders and further recommending that this action be dismissed if Plaintiff fails to pay the full filing fee within twenty days of any order adopting the Report and Recommendation. Plaintiff filed no objection. However, Plaintiff filed a Motion to Dismiss on September 9, 2024 (Dkt. 23), requesting that this action be dismissed.

Plaintiff did not include a basis for dismissal in his Motion (Dkt. 23). Because no opposing party has served an answer or motion for summary judgment, the Court construes Plaintiff's Motion (Dkt. 23) as a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). As such, it is self-executing and requires no further action by the Court.¹

Accordingly, the Court **DECLINES TO ADOPT** the Report and Recommendation (Dkt. 21) as it is now moot. Plaintiff's pending Motion (Dkt. 13) is also **DENIED AS MOOT**.

¹ See *Lundahl v. Halabi*, 600 F. App'x 596, 603 (10th Cir. 2014) (unpublished) (“[A] plaintiff has an absolute right to dismiss without prejudice [under Rule 41(a)(1)(A)(i)] and no action is required on the part of the court.” (quoting *Janssen v. Harris*, 321 F.3d 998, 1000–01 (10th Cir. 2003))).

IT IS SO ORDERED this 6th day of November 2024.

A handwritten signature in black ink, appearing to read 'P. Wyrick', is written above a horizontal line.

PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE